

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FRANCISCO FERMIN, EMILIO MORENO and
ANDRES DEL ROSARIO,

Plaintiffs,

- against -

LAS DELICIAS PERUANAS RESTAURANT,
INC., BERTHA MARCONI and NICOLAS DE
PIEROLA,

Defendants.

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ROSLYNN R. MAUSKOPF, United States District Judge.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**
14-CV-0559 (RRM) (VMS)

By a motion filed August 25, 2014, plaintiffs moved for a default judgment. On November 6, 2014, this Court referred the matter to the assigned Magistrate Judge, the Honorable Vera M. Scanlon. On February 27, 2014, Magistrate Judge Scanlon issued a Report and Recommendation (“R&R”) recommending that this Court (1) grant plaintiffs’ motion for default judgment; (2) award plaintiffs \$428,008.40 in damages, which represents \$289,605.23 for plaintiff Francisco Fermin, \$59,343.64 for plaintiff Emilio Moreno, \$70,388.53 for plaintiff Andres Del Rosario, and \$8,671.00 in attorney’s and paralegal’s fees and costs; and (3) order the defendants to pay plaintiffs’ post-judgment interest, to be calculated from the date the Clerk of Court enters judgment in this action until the date of payment, using the federal rate set forth in 28 U.S.C § 1961..

Magistrate Judge Scanlon reminded the parties that any objections to the R&R were due by March 16, 2015. (Doc. No. 17 at 54.) Magistrate Judge Scanlon further noted that she had mailed a copy of the relevant docket entry as well as the R&R and its appendix to each defendant. (Doc. No. 17.) As of this date, no party has filed any objections.

Pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72, the Court has reviewed the R&R for clear error. Noting the thorough review that Magistrate Judge Scanlon performed of plaintiffs' claims, affidavits, and other documents, her well-reasoned analysis of defendants' liability, and her detailed examination of plaintiffs' individual damages calculations, the Court finds no clear error in the R&R. It concurs with and adopts Magistrate Judge Scanlon's R&R in its entirety. *See Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007).

CONCLUSION

Accordingly, plaintiffs' motion for default judgment is GRANTED, and it is hereby ORDERED that defendants Las Delicias Peruanas Restaurant, Inc., Bertha Marconi and Nicolas De Pierola are jointly and severally liable for damages in the amount of \$428,008.40 to each of the named plaintiffs as follows:

Damages to plaintiff Francisco Fermin: \$12,555.60 for unpaid minimum wages for hours worked up to forty hours per week; \$38,155.68 for unpaid minimum wages and overtime premium pay for hours worked in excess of forty hours per week; \$8,559.55 for unpaid spread-of-hours premiums; \$128,700.00 in misappropriated tips; \$10,761.07 in liquidated damages under the NYLL and \$14,406.80 in liquidated damages under the FLSA; and \$76,466.53 in pre-judgment interest, for a total award of \$289,605.23.

Damages to plaintiff Emilio Moreno: \$8,726.00 for unpaid minimum wages for hours worked up to forty hours per week; \$20,376.60 for unpaid minimum wages and overtime premium pay for hours worked in excess of forty hours per week; \$1,599.15 for unpaid spread-of-hours premiums; \$4,164.64 in liquidated damages under the NYLL and

\$13,231.20 in liquidated damages under the FLSA; and \$11,246.05 in pre-judgment interest, for a total award of \$59,343.64.

Damages to plaintiff Andres Del Rosario: \$13,027.20 for unpaid minimum wages for hours worked up to forty hours per week; \$21,668.00 for unpaid minimum wages and overtime premium pay for hours worked in excess of forty hours per week; \$1,513.35 for unpaid spread-of-hours premiums; \$4,696.24 in liquidated damages under the NYLL and \$16,611.60 in liquidated damages under the FLSA; and \$12,872.14 in pre-judgment interest, for a total damages award of \$70,388.53.

And it is FURTHER ORDERED that defendants Las Delicias Peruanas Restaurant, Inc., Bertha Marconi and Nicolas De Pierola are hereby jointly and severally liable for attorney's fees and costs in the total amount of \$8,671.00, and it is

FURTHER ORDERED that defendants Las Delicias Peruanas Restaurant, Inc., Bertha Marconi and Nicolas De Pierola pay post-judgment interest.

The Clerk of Court is directed to enter Judgment accordingly, transmit copies of this Order and the accompanying Judgment to each of the three defendants via U.S. Mail at the following address: Las Delicias Peruanas Restaurant, Inc., 43-07 104th Street, Corona, New York 11368. The Clerk of Court is further directed to close this case.

SO ORDERED.

Roslynn R. Mauskopf

Dated: Brooklyn, New York
March 19, 2015

ROSLYNN R. MAUSKOPF
United States District Judge